IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Appeal No. 760 of 2001
(Old No. 894/1991)

Date of decision :-08.05.2007

A.F.R. (Approved for Repotting)

~~Not approved for reporting~~

Date :-08.05.2007

Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARAKHAND, AT NAINITAL

Criminal Appeal No. 760 of 2001
(Old No. 894/1991)

1. Hira Lal S/o Praye Lal
2. Jagdish S/o Pyare Lal
3. Birbal S/o Pitamber
   all R/o Gadarpura Colony
   Police Station Gadarpur
   District Nainital ..Appellants

Versus

State …Respondent

Delivery of Judgment :- 08th May, 2007

Mr. Rajendra Kotiyal, Advocate for the appellants
Mr. G.S. Sandhu, Govt. Advocate with Mr. M.A. Khan, Brief Holder for the respondent-State.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

Per Hon'ble J.C.S. Rawat, J.

1. This Criminal Appeal has been directed against the judgment and order dated 27.04.1991 passed by Shri A.S. Chaudhari, the then Additional Sessions Judge/Special Judge, Nainital in S.T. No.128 of 1987 State Vs. Hira Lal and others, whereby the appellants Hira Lal, Jadish and Birbal were convicted and sentenced to undergo imprisonment for life under section 302/34 I.P.C. However, the co-accused Het Ram was not found guilty of the charge under section 302/34 I.P.C., as such, he was acquitted from the charge levelled against him.

2. The facts, in nutshell, are that Wahid PW1 lodged an F.I.R. Ex.Ka. 1 in the police station alleging therein that the accused-Hira Lal and the deceased-Tofique were carrying the business of forest wood together. The accused Hira Lal was having a 'dunlop' (buffalo-

cart) for carrying the business. It was further alleged that the exchange of hot words took place between them 5-7 days prior to the incident and due to this the deceased Tofique did not take the 'dunlop' (buffalo-cart) of Hira Lal for his work. On account of this, there was an enmity in between the accused Hira Lal and the deceased Tofique. On 21.03.1986 at about 7:30pm the complainant Wahid alongwith his brother Tofique was going to jungle. When they reached near the house of accused Hira Lal, the deceased Tofique told the complainant Wahid that he had to take the outstanding amount from the accused Hira Lal. The deceased Tofique gave a call to the accused Hira Lal, who was present inside the house. Hira Lal asked him to come inside the house. The deceased went into the house of the accused Hira Lal where the other co-accused persons i.e. Jagdish, Het Ram and Birbal were also present. Wahid remained outside the door of the house of Hira Lal. When the deceased Tofique demanded his money, the accused Hira Lal replied him that *"hum tumko paiso ke sath bhagwan ke yahan bhej dete hai".* Thereafter, the accused Hira Lal took a 'patal' in his hand. Birbal and Jagdish took a knife and 'farsha' in their hands respectively. The accused Het Ram caught hold of the deceased and rest of the accused persons started assaulting the deceased Tofique. When the complainant-Wahid made a hue and cry, Bhola Dutt and Ali Gauhar who were coming from the jungle also reached at the spot. Bhola Dutt and Ali Gauhar were having torch with them. The light of the lantern was also inside the house of the appellant-Hira Lal and they saw the incident in the light of torch and lantern. The deceased Tofique succumbed to his injuries at the spot.

The accused persons also threatened the complainant Wahid and Bhola Dutt and Ali Gauhar. Thereafter, the complainant Wahid came to the police station and lodged the report. On the basis of the report Ex.ka.1, a Chick F.I.R. Ex.ka.6 was prepared and necessary entry was made in the general diary Ex.ka.7. The Investigating Officer started the investigation and sent the dead body for postmortem. The Investigating Officer recovered patal, knife and Farsa which were used in the commission of the offence. The I.O. also recovered blood stained soil and prepared the site plan. He also recorded the statement of the witnesses. After completing the investigation, the Investigating Officer submitted the chargeshet before the court.

3. After submission of chargesheet the appellants-accused were committed to the court of Sessions for trial and the trial court framed charges against the accused persons i.e. Hira Lal, Jagdish, Birbal and Het Ram. They denied the charges levelled against them and claimed their trial.

4. The prosecution in support of its case examined Wahid PW-complainant. He is the brother of the deceased. He is the eye-witness of the incident. Bhola PW2 is also an eye-witness of the incident. Dr. S.K. Khanna PW3 is the Medical Officer, who conducted the postmortem of the dead body of the deceased. Constable Amar Singh PW 4 is a formal witness, who took the body of the deceased to the medical officer for postmortem. Head Moharrir Dharam Singh PW5 is a witness of recovery of ‘patal’, knife and ‘farsa’. Harpal Singh PW6 has investigated the matter in part. Sri I.

B. Nautiyal PW7 recorded the statements of the witnesses and visited the place of occurrence. He completed the rest of the investigation and submitted the chargesheet Ex.Ka.16. Dilip Singh PW8 has scribed the report on the dictation of Wahid-complainant. The prosecution has also adduced the evidence of Ram Gopal PW9, who wrote an FIR Ex.ka.17 on the dictation of Hira Lal. The appellants-accused did not adduce any documentary evidence in their defence.

5. The accused persons were examined u/s 313 Cr.P.C. and they have pleaded not guilty to the offence. They have stated that they have been falsely implicated in this case.

6. The learned Sessions Judge on appreciation of the evidence held the appellants Hira Lal, Jagdish and Birbal guilty under section 302/34 I.P.C. and convicted and sentenced as mentioned above. Co-accused Het Ram was not found guilty and he was acquitted of the charge u/s 302/34 IPC.

7. We have heard Mr. Rajendra Kotiyal, learned counsel for the appellants and Mr. G.S. Sandhu, learned Government Advocate with Mr. M.A. Khan, Brief Holder for the respondent-State, Perused the record carefully.

8. At the outset, it needs to be mentioned here that it is not disputed that the deceased Tofique died on account of the injuries sustained by him on the date of occurrence. Dr. S. K. Khanna PW3, Medical Officer conducted the postmortem of the deceased on

22.03.1986 at 1:10 am and found the following ante-mortem injuries on the dead body of the deceased:-

(i) Incised wound 4½ x 1cm on right side face from angle of mouth to angle of mandible x muscle deep horizontally placed.

(ii) Incised wound horizontally placed 3” x 1” on right side neck x muscle & vessels deep 3½ below ear outerside.

(iii) Incised wound 1½ x ½ on right temple 2” above and front of right ear.

(iv) Incised wound somewhat curved encircling the back of neck and scalp 12” x 4” at places bore deep & at place muscle and skin deep. Present in slap. Underneath bone cut sharply

(v) Incised wound 3” x 1” on left side neck horizontally placed 2½ below the left ear about 2½ deep.

(vi) Incised wound vertically placed 2” x ½” as left shoulder back side x 1” deep.

(vii) Incised wound 1½ x ½” x muscle deep 1” behind the injury no.6 on shoulder back.

(viii) T shaped incised wound 18” x 1¾ on the back at and above on its buttocks at placed muscle and at place bone deep horizontally and obliquely placed.

(ix) Incised wound 4½ x 1” on right shoulder joint back side x bone deep horizontally placed.

(x) Incised wound 6” x 2” on right shoulder back side horizontally placed x 2 ½” deep.

(xi) Incised wound vertically placed on right arm 3½” x 1” on lateral side 4” below the shoulder joint.

(xii) Incised wound 11” x 3 ½” in front of arm and hand at place

bone deep and at place muscle deep bone exposed.

(xiii) Abrasion ½" 3½" on right leg 2" below the knee joint front side.

In the opinion of the Medical Officer, the death was half to one day old and the death was caused due to shock and haemorrhage resulting from the ante-mortem injuries sustained by the deceased. He has further opined that the death could have occurred on 21.03.1986 at about 7PM. Thus, the date and time of death is corroborated by the medical evidence. Apart from this, the appellant-Hira Lal has also lodged a report Ex.ka.17, which was recorded by the police in the G.D. against the deceased alleging therein that the deceased armed with a knife entered into his house and demanded Rs.5000/- and also threatened him that if the money would not be given he would kill him. On this, hot words were exchanged between them. On the hue and cry, persons of the locality reached at the spot and they had also assaulted him at the spot. Thus, it is admitted to the appellants that Hira Lal, Jagdish and Birbal caused injuries to the deceased due to which the deceased died at the spot.

9. Now, we have to consider as to whether the appellants were responsible for causing the death of the deceased or not. The prosecution has adduced the evidence of Wahid PW1 and Bhola PW2, who are said to be the eye witnesses of the incident. Wahid PW1 has stated in his evidence that 5 to 7 days before the incident there was a quarrel between the deceased and Hira Lal with regard to the settlement of their accounts.

Wahid PW1 has further stated in his evidence that on 21.03.1986 at about 7:30pm he alongwith his brother Tofique was going to jungle. When they reached near the house of accused Hira Lal, the deceased Tofique told him that he had to take the outstanding amount from the appellant Hira Lal. The deceased Tofique gave a call to the appellant Hira Lal, who was present inside the house. Hari Lal asked him to come inside the house. The deceased entered into the house of the appellant Hira Lal where the other accused persons i.e. Jagdish, Het Ram and Birbal were also present. When the deceased Tofique demanded his money, the appellant Hira Lal got annoyed with him and threatened him. Thereupon, appellants Hira Lal, Jagdish and Birbal started causing injuries to the deceased by patal, farsa and knife respectively. Co-accused Het Ram caught hold of the deceased and thereby assisted the appellants in causing injuries on the deceased. Tofique succumbed to his injuries at the spot. When Wahid PW1 raised cries, Bhola PW2 and Ali Gauhar reached at the place of occurrence. Bhopal PW2 was examined by the prosecution. He had stated that when Wahid PW1 and the deceased raised hue and cry he reached at the spot and saw the incident in the light of the lantern, which was inside the house of the appellant-Hira Lal and torch. In the light of torch and lantern, Bhola PW2 recognized the appellants.

10. It is admitted case of the parties that the deceased was present in the house of the appellant Hira Lal. It is also admitted that the appellant Hira Lal hit the deceased by ‘patal’ and Jagdish alongwith other persons of the locality also caused injuries on the

person of the deceased. Thus, the presence of the appellant Hira Lal and Jagdish is admitted and the incident is admitted to the parties.

11. Now, we have to consider as to whether the evidence of Wahid PW1 and Bhola PW2 is credible and cogent or not. We have gone through the entire evidence. The appellants have cross examined the eye-witnesses of the incident, but nothing could be elicited from their evidence to discredit their testimony. Both witnesses remained consistent in their cross examination with regard to the factum of the incident.

12. Learned counsel for the appellants contended that the prosecution has not produced the independent witnesses to corroborate the fact of incident. It was further contended that it has come in the evidence that Ali Gauhar also came at the spot and he saw the incident, but he was not produced before the court. It was further contended that the eye-witnesses of the prosecution are interested witnesses as they are related to the deceased. It was contended on behalf of the appellants that the prosecution should have adduced the evidence of independent witnesses who were also present at the time of incident. Learned G.A. refuted the contention.

13. Although, it is true that the eye-witnesses and the deceased were related to each other, but the eye-witness account of the incident cannot be discarded on this ground alone. There is no rule of law or prudence which requires that the evidence of a close relation must be discarded for the simple reason i.e. they are

related to the deceased/injured. Wahid PW1 and Bhola PW2 would be the last person on earth to adopt a course by which some innocent persons would be convicted in place of the person really guilty of the murder of the deceased. In such circumstances, it would not be just and proper to discard their evidence on account of their relationship with the deceased.

14. So far as the contention that no independent witness was produced in concerned, Wahid PW1 has categorically stated in his cross examination that Bhola Dutt PW2 and Ali Gauhar reached at the spot and they saw the incident. There is a village adjacent to the house of the appellant(Hira Lal), Sant Lal, Mohendra, Dariya etc. who reside in adjacent village, but they did not reach at the spot at the time of incident. It is also pertinent to mention here that the public prosecutor had made an endorsement in the application to discharge the prosecution witnesses Ali Gauhar, Sant Ram and Sarafat Ali as they had become hostile and they would not be supporting the prosecution case. The prosecution has adduced credible and cogent evidence of Wahid PW1 and Bhola Dutt PW2. It is not always necessary to multiply the evidence of the incident on the same point. It has to be seen what is the quality of the witnesses. It is the quality of the evidence and not the quantity, which is required. If the evidence available on record is otherwise satisfactory in nature and can be said to be trustworthy then increase in the number of witnesses cannot be the requirement of the case. Moreover, it has now almost become a fashion that the public is reluctant to appear and depose before the court especially in criminal cases

because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are harassed lot. They are being threatened, intimidated and at the top of all they are subjected to unnecessary lengthy cross-examination. So, the witnesses avoid to come to the court. The evidence of prosecution witnesses is consistent and nothing had been elicited from their cross examination which may render their evidence unreliable. The evidence of the prosecution witnesses is credible and cogent. In view of the above discussions, we do not find any force in the contentions advanced by the learned counsel for the appellants.

15. It was further contended that the presence of Wahid PW1 was unnatural at the spot and as such his evidence cannot be relied upon. Learned G.A. refuted the contention. Wahid PW1 has stated in his evidence that he alongwith his brother Tofique was going to jungle in the evening of 21.03.1986. The evidence of PW1 is further corroborated by the evidence of Bhola Dutt PW2. Bhola Dutt PW2 has categorically stated in his evidence that on 21.03.1986 at about 7:30 he heard the cries of the complainant Wahid PW1 who was standing at the door of the appellant Hira Lal. Therefore, the presence of Wahid PW1 cannot be doubted by any stretch of imagination that he was not going to jungle. It was natural conduct of Wahid PW1 to accompany his brother to the jungle. Wahid PW1 and Bhola Dutt PW2 were cross examined at length, but nothing could be elicited from their evidence to discredit their testimony. Therefore, the contention raised on behalf of the appellants has no force.

16. The prosecution has proved the motive for committing the murder of the deceased. In order to prove the motive, the prosecution had adduced the evidence of Wahid PW1, who had stated in his evidence that the appellant-Hira Lal and the deceased-Tofique were carrying the business of forest-wood together. The accused Hira Lal was having a 'dunlop' (buffalo-cart) for carrying the forest wood. After deducting the freight charges of 'dunlop' (buffalo-cart), they used to divide the rest of the income equally. It was further stated that the exchange of hot words took place between them 5-7 days prior to the incident and due to this the deceased Tofique did not take the 'dunlop' (buffalo-cart) of Hira Lal for his work. On account of this, there was enmity between the accused Hira Lal and the deceased Tofique. Wahid PW1 has also stated that on 21.03.1986 at about 7:30pm he alongwith his brother Tofique was going to jungle. When they reached near the house of appellant Hira Lal, the deceased Tofique told him that he had to take the outstanding amount from the appellant Hira Lal. When the deceased Tofique demanded his money from the appellant Hira Lal, he got enraged with him and took a 'patal' to assault the deceased. This evidence shows that appellant-Hira Lal had an ill-will against the deceased, due to the aforesaid motive the appellant alongwith other accused persons caused fatal injuries to the deceased-Tofique. For the sake of argument assuming that this evidence is insufficient to establish the motive for committing the murder of the deceased, even then if the prosecution has been able to establish beyond reasonable doubt from the evidence on record so adduced that it was the appellants alone who had

committed the murder, the absence of motive has no relevance and the evidence so adduced could be made the basis for conviction. The prosecution has been able to establish the guilt of the appellants beyond reasonable doubt by the ocular evidence. It is well settled principle of law that if the evidence of witnesses is reliable, satisfactory and convincing then the absence of motive becomes irrelevant for the decision of the case. it is also well settled that establishment of motive is not sine qua non for proving the prosecution case. It was held in **Yunus Vs. State of M.P. SCC 2003 (1) p/429**:-

> *"The prosecution in the present case has failed to prove the motive. Failure to prove motive for crime in our view is of no consequence. The role of the accused persons in the crime stands clearly established. The ocular evidence is very clear and convincing in this case. The illegal acts of the accused persons have resulted in the death of a young boy of 18 years. It is also well settled law that establishment of motive is not sine quo non for proving the prosecution case."*

Thus, the motive to commit the murder of the deceased is established by the prosecution.

17. The incident took place at about 7:30pm on 21.03.1986. Wahid PW1, who was present at the scene of occurrence, promptly reported the matter to the police at 9:10pm on 21.03.1986. The distance between the police station and the place of incident is about 3kms. Thus, there is no delay in lodging the FIR. The prompt FIR thus inspires confidence that it was not the outcome of any consultation or deliberation. FIR in a criminal case and particularly in a murder case is a

vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. The fact that the appellants committed the murder of the deceased further stand corroborated by the prompt FIR in which the name of the appellants have been shown. The medical evidence mentioned in the preceding paragraph further corroborates the prosecution version.

18. Learned counsel for the appellants contended that the appellants caused the injuries on the person of the deceased in exercise of their right of private defence as the deceased armed with a knife entered into the house of Hira Lal and demanded a sum of Rs.5000/- and also threatened him that if the money would not be given he would kill him. The deceased was a notorious criminal. It was further contended that Hira Lal had an apprehension of attack/assault by the deceased and as such appellant Hira Lal caused injuries to the deceased with ‘patal’ in exercise of his right of private defence. On the appellant’s hue and cry, the neighbours came there and also caused injuries on the person of the deceased. Hira Lal appellant himself went to the police station alongwith other persons and produced the knife

of the deceased in the police station. Appellant Hira Lal lodged an FIR Ex.ka.17 in the police station against the deceased-Tofique. Learned G.A. refuted the contention. Section 96 IPC provides that nothing is an offence which is done in the exercise of the right of private defence. The section does not define the expression “right of private defence”. It merely indicates that nothing is an offence which is done in the exercise of such right. Whether in a particular set of circumstances, a person acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the court must consider all the surrounding circumstances. Under Section 105 of the Indian Evidence Act, 1872, the burden of proof is on the accused, who sets up the plea of self-defence, and, in the absence of proof, it is not possible for the court to presume the truth of the plea of self-defence. The court shall presume the absence of such circumstances.

19. The Apex Court in the cases of **Munshi Ram Vs. Delhi Admn. AIR 1968 SC 702 Vijayee, Singh & others Vs. State of U.P. AIR 1990 SC 1459; Kashi Ram & others Vs. State of M.P. AIR 2001 SC 2902 and Laxman Singh Vs. Poonam Singh & others AIR 2003 SC 3204** has held that though Section 105 of the Evidence Act enacts of rule regarding burden of proof but it does not follow therefrom that the plea of private defence should be specifically taken and if not taken shall not be available to be considered though made out from the evidence available in the case. A

plea of self defence can be taken by introducing such plea in the cross-examination of prosecution witnesses or in the statement of the accused persons recorded under section 313 Cr.P.C. or by adducing defence evidence. And, even if the plea is not introduced in any one of those three modes still it can be raised during the course of submissions by relying on the probabilities and circumstances obtaining in the case.

20. Perusal of the record reveals that the prosecution has led the evidence that 5-7 days before the incident there was a quarrel in between the deceased and appellant Hira Lal in connection with the settlement of outstanding money due towards the appellant Hira Lal. On the fateful evening, the deceased alongwith his brother was going to the jungle. When they reached near the house of the appellant Hira Lal the deceased called him from outside. The appellant Hira Lal asked him to come inside his house. When the deceased entered into the house he found that the appellant Hira Lal was accompanied by other appellants Jagdish, Birbal and co-accused Het Ram. The deceased demanded his outstanding money from the appellant Hira Lal. On this, the appellant Hira Lal became annoyed with the deceased and brought a ‘patal’ in his hand and caused injuries on the person of the deceased. It is also in the prosecution evidence that the other accused persons were also accompanying the appellant Hira Lal. The appellants have not adduced any evidence in support of their plea of private defence that the deceased trespassed the house of the appellant-Hira Lal and he had an opened knife in his hand and threatened him to pay a sum of Rs.5000/-.

As a matter of fact, the defence could have adduced some evidence in support of the plea raised by the appellants. Moreover, the appellants Hira Lal, Jagdish and Birbal were examined under section 313 Cr.P.C. They have not taken the plea of self-defence in their statements recorded under section 313 Cr.P.C. Thus, the plea of self defence has neither been raised in the statements recorded under section 313 Cr.P.C.

21. Now, we have to examine as to whether the probabilities and circumstances from the prosecution evidence of the case make out any right of private defence in favour of the appellants. We have pointed out earlier that the ocular testimony of the witnesses clearly reveals that the entry of the deceased into the house of the appellant was at the behest of the appellant Hira Lal. There is nothing in the evidence to suggest much less to establish that the deceased had a open knife in his hand and he demanded a sum of Rs.5000/-. It is also in the evidence that the appellant Hira Lal picked up a ‘patal’ and hit the deceased by the ‘patal’. The perusal of record reveals that the appellant Hira Lal had not sustained any injury on his person. It cannot be held on the circumstances and the probabilities that there was any apprehension to the appellants that the deceased would cause any fatal injury to them. It is also pertinent to mention here that the deceased had sustained as many as 13 injuries on his person. If the deceased would have a knife in his hand as alleged by the appellant Hira Lal he would have definitely given knife blows on the persons of the appellants. It is evident from the evidence that he was a criminal and he would not have waited for so many

injuries on his person if the deceased would have a knife in his hand. We are of the view that the appellants had not discharged their burden of establishing the plea of self defence even by showing preponderance of probabilities in favour of that plea on the basis of the prosecution evidence or material on record. On the other hand, the evidence of the prosecution witnesses has proved the prosecution version beyond reasonable doubt.

22. Merely submitting a report to the police station is not sufficient to prove the incident as alleged by the appellants. It was pointed out that I.B. Nautiyal PW7 (I.O.) has admitted that the deceased was a notorious person. He had further stated that during his investigation he found the report Ex.ka.17 of Hira Lal correct. It is also pertinent to mention here that the police had not lodged even an FIR in the police station. Thus, the said matter was not investigated by the police. The I.O. appears to have given his evidence as an obliging witness. If the I.O. had come to the conclusion that there was no substance in the prosecution version there he should have submitted the final report in this case. We have pointed that there is credible and cogent evidence of the prosecution and as such the observations made by the I.O. are of no avail.

23. The defence taken at the stage of cross examination as well as at the time of recording the statements under section 313 Cr.P.C. is of simple denial. It has been stated in the written report submitted by appellant Hira Lal to the police, which was recorded in the G.D. Ex.ka .7 that on 21.03.1986 at

about 7:45pm the deceased entered into the house of appellant-Hira Lal with a knife and demanded a sum of Rs.5000/- from him. The deceased also threatened him that if the money would not be given he would kill him. The appellant Hira Lal had an apprehension that he would kill him and he brought a patal and caused injuries on the person of deceased. When he made hue any cry, other persons of the locality reached at the spot. They also caused injuries to the deceased, who died at the spot. The accused persons fled away from the scene of occurrence. He also produced a knife in the police station claiming it to be of the deceased. The appellant had put the suggestion to the witness Wahid PW1 that the deceased and his associates entered into the house of the appellant Hira Lal with an intention to outrage the modesty of the wife of appellant Hira Lal which was denied by him. It was further suggested to Wahid PW1 that he wanted to commit the robbery in his house and he was having a knife in his hand which was also denied by Wahid PW1. Appellant Hira Lal had not stated in his report submitted to the police that the deceased entered into his house with the intention to outrage the modesty of his wife and to commit the robbery. Thus, the appellants had taken altogether different stands on different stages. Even if the deceased was a notorious criminal it did not mean that the appellants had a licence to kill him. The pleas taken by the appellants are inconsistent and their defence is not plausible.

24. We are completely in agreement with the findings recorded by the trial court. Therefore, we are of the view that the prosecution has established the guilt

beyond reasonable doubt against the appellants. We find that the learned trial court has rightly convicted and sentenced the appellants and there is no infirmity in the judgment passed by the trial court.

25. Hence, the appeal is dismissed and the conviction and sentence awarded by the Trial court against the appellants are confirmed.

26. Let the lower court record be sent back to the court concerned for compliance. Compliance report be submitted within two months.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**

Dated 08th May, 2007
LSR